IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RFA No. 74 of 2000

Reserved on : 5th September, 2007
Date of Decision: 12th October, 2007

Brij Lal and another	Appellants
Versus	
Land Acquisition Collector and another	Respondents.

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? Yes.

For the appellants: Mr.S.R.Sharma, Advocate.

For the respondents: Mr. Ashok Chaudhary, Addl. Advocate General.

Sanjay Karol, J.

The appellants have assailed the award dated 1st October, 1999 passed by District Judge, Shimla, in Land Reference No.29-S/4 of 99/90, titled as Brij Lal and another vs. L.A.C. and another, whereby compensation awarded by the Land Acquisition Collector has been enhanced to Rs.43,600/- from Rs.9,904.75 per bigha.

The respondent-State vide Notification dated 30.9.1981, under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act), sought to acquire 1-9 Bighas of the claimant land, situate in Village Darni, District Shimla, HP, for a public purpose i.e. construction of police barrier-Tutikandi-Phagli-Khalini-Parimahal road.

Award dated 23rd September, 1986 was passed by the Collector whereby the value of appellants' acquired land was assessed at

[1] Whether the reporters of Local Papers are allowed to see the Judgment?

Rs.9904.75 paise per bigha in addition to the value of trees. Being dissatisfied with the same appellants preferred a Reference Petition under Section 18 of the Act claiming market value of not less than Rs. 500 per sq. yard. Reference petition was decided in terms of award dated 27th March, 1990, which was assailed by way of an appeal and decided in terms of order dated 29th July, 1997 by this Court. However, in further appeal to the Supreme Court vide order dated 19th February, 1999, the matter was remanded back to the High Court for consideration afresh and vide order dated 22nd June, 1999 this Court set aside the award dated 27th March, 1990 and remanded the matter back to the District Judge for consideration afresh. The reference petition was decided in terms of impugned award whereby the amount of compensation awarded by the Land Acquisition Officer was enhanced to Rs.43,600/-.

In order to support its claim, the appellants examined six witnesses and proved 15 documents, whereas respondent examined one witness and got exhibited one document.

Learned counsel for the appellants has assailed the impugned award contending that Ext.PY could not have been made the basis for determining the fair market value. The same is judgment in personam and not in rem and cannot be held to be final and conclusive qua the appellants. Since the land was acquired for the purposes of construction of road, there was no justification in making 30% deduction on the value so arrived at; the land was fully developed and the Court shall presume that there is annual increase in the value of the land by 15%.

Perusal of the impugned award would show that the appellants have exhibited the documents i.e. Ext.PA, showing three yearly average market value i.e. Rs.1,27,504 per bigha of Village Kanlog, an

adjoining Mohal, Ext.PW-3/B, award dated 27th March, 1990 passed by District Judge, Shimla in case of Brij Lal awarding flat rate of Rs.47,811 per bigha, Ext.PW-3/D award 31st October, 1987 passed by District Judge, Shimla awarding flat rate of Rs. 1 lac per bigha, Ext.PW-4/A and Ext.PW-4/B maps, Ext.PW-4/D sale deed of Smt. Sneh Lata, Ext.PW-6/A report of expert Shri R.B.Sexena, Executive Engineer (Retd.), Ext.PX judgment dated 2nd December, 1991 of this Court and Ext.PY award of District Judge, Shimla in case of Kanshi Ram v. LAC, Ext.PB sale deed of Balwant Rai, whereby land was sold at Rs.384 per sq. yard (total sale amount Rs.40,000 for 104 sq. yards); Ext.PC sale deed of Jawant Rai, whereby land was sold at Rs.94 per sq. yard (total sale amount Rs.30,000/- for 306 sq. yards); vide Ext.PW-4/C the average market value of land in Station Ward, Shimla was assessed at Rs.106 per sq. yard i.e. Rs. 1 lac per bigha. This is for the period 16.6.1979 to 15.6.1980; vide Ext.PW-4/D the average market value of land in Station Ward, Shimla for 5 years was Rs.51 per sq. yard i.e. Rs.48,144/- per bigha; Ext.PW-5/A sale deed whereby market value of land comes to Rs.48 per sq. yard (total sale amount Rs.15,000/- for 306 sq. yard); vide Ext.PW-6/A, expert opinion, the market value of the land assessed to be Rs.200/- per sq. yard and Ext.PX the Division Bench judgment of this Court whereby the market value assessed at Rs.130/- per sq. yard (Rs.1,75,000/- per bigha).

During the course of hearing, learned counsel for the appellants has submitted that Ext.PD, Ext.PF and Ext.PW-3/C are not relevant and are not required to be considered.

Perusal of the impugned award would show that Ext.PB, Ext.PC and PW-5/A all sale deeds pertaining to Ward Bara, Shimla, have not been accepted for the reason that the acquired land is incomparable

with sale transaction land with regard to its location. Ext.PW-3/D award dated 31.10.1987 of Village Patti Rihana has also not been accepted, however, without assigning any reason. Same is the position with regard to Ext.PX judgment of this Court in RFA No.1 of 1988 and connected matters. The Court has accepted award dated 16.8.1999, Ext.PY and Ext.PA the three yearly average market price for transactions which took place between 16th June, 1978 to 15th June, 1981 to determine the market value.

It has come on record through the statement of PW-4 and also Ext.PW-6/A that the acquired land falls within the territorial limits of Municipal Corporation, Shimla and is just abutting the Station Ward, Bara Shimla and that in Bara Shimla is similar to that of acquired land and is extremely suitable for construction of houses and is sold as such. As per the statement of PW-4 and from Ext. PW-4/A, it is also evident that the acquired land comes in between road bye-pass Tuti Kandi to Chhota Shimla and is just at a distance of 300 mts. from Sr. Secondary School, Lalpani, one Kilometer from High Court, 500 meters from Bus Stand, 3-4 Kilometers from Government Housing Colony, Nabha, 200 meters from Ram Nagar, and 1 ½ kilometer from 100 years old St. Edwards School.

As is evident from the material on record (i) the land is located at a lower altitude and has less snow and moderate climate as compared to other places, (ii) it is more sunny throughout the year, which is a requirement in a hilly place, like Shimla (iii) it is more flat and less rocky and has link with road; (iv) it is suitable for house construction and commercial activities and in fact is catering to the ever expanding need of Shimla town; (v) there are many houses and housing clusters in the close proximity; (vi) there is dispensary; (vii) according to the interim

development plan, it has great potentiality for development and (viii) the entire land is to be utilized without leaving any space for providing basic amenities.

From Ext.PW-6/A, report of expert, it is evident that the acquired land has all the facilities including telephone, road, water, electricity and in fact is located in the centre of the entire commercial activity, which is taking place in the unending expanding town of Shimla.

In RFA No. 1 of 1988, Ext.PX, after considering the decision of the Apex Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and another*, reported in AIR 1988 SC 1652, the Court referred the following factors for determining the market value:-

> "4. The following factors must be etched on the mental screen:
>
> (1) to (9) …….
>
> (10) The most comparable instances out of the genuine instances have to be identified on the following considerations:
>
> a. proximity from time angle
>
> b. proximity from situation angle
>
> (11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deducted by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.
>
> (12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.
>
> (13) The market value of the land under acquisition has thereafter to be deducted by loading the price

reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:-

(for table see below)

Plus factors	Minus factors
1. Smallness of size	1. Largeness of area.
2. proximity to a road	2. situation in the interior at a distance from the road
3. frontage on a road	3. narrow strip of land with very small frontage compared to depth
4. nearness to developed area	4. lower level requiring the depressed portion to be filled up.
5. regular shape	5. remoteness from developed locality
6. level vis-à-vis land under acquisition	6. some special disadvantageous factor which would deter a purchaser.
7. special value for an owner of an adjoining property to whom it may have some very special advantage.	

……"

The Apex Court in *Rishi Pal Singh and others vs. Meerut Development Authority and another*, (2006) 3 SCC 205, has now held that even small plots can be considered for determining fair market value.

In *Krishi Utpadan Mandi Samiti vs. Malik Sartaj Wali Khan and another*, reported in (2001) 10 SCC 660, the Court has held that even with regard to agriculture land the assessment of value can be computed in terms of square yard basis also.

In *ONGC Ltd. vs. Sendhabhai Vastram Patel and others*, reported in (2005) 6 SCC 454, the Court held:-

> "While determining the amount of compensation payable in respect of the lands acquired by the State, indisputably, the market value therefore has to be ascertained. Although, there exist different modes for arriving at the market value for the land acquired; the best method, however, as is well known would be the amount which a willing purchaser of the land would pay to the owner of the land as may be evidenced by the deeds of sale. In the absence of any direct evidence on the said point, the court may take recourse to other methods viz. judgments and awards passed in respect of acquisition of lands made in the same village and/or neighbouring villages. Such a judgment and award in the absence of any other evidence, however, would have only evidentiary value.

In Shaji Kuriakose v. Indian Oil Corpn. Ltd. [(2001) 7 SCC 650,], this Court observed: (SCC pp.652-53, para 3)

> "3. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalization of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the

> sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land."

The acquired land is approximately 196 sq. yards (1-9 Bighas). The sale deeds Ext.PB, Ext.PC and Ext.PW-5/A are for approximately 250 sq. yards of which the average of sale price comes to approximately Rs.325 sq. yards.

From Ext.PX, it is clear that 102 Bighas of land of Villages Patti Rehina, Kasumpti and Junga were acquired in the year 1980 by the Shimla Development Authority for the purposes of setting up a housing colony. This Court while relying upon sale transactions of small parcels of land and that too of a different revenue villages determined value of land at Rs.1,75,000/- per Bigha less 30% deductions thereupon. Therefore, for large chunks of land acquired for housing purposes, this Court has awarded compensation @ Rs. 1,22,500 per bigha. The acquired land is far greater value and is better located than the land covered under the said Award.

Ext.PY pertains to the year 1999 and cannot be accepted as the same is judgment in personam and not in rem. The appellants in the

present case has taken pains, in not only producing the sale transactions pertaining to the relevant year but also placed on record the average sale price as maintained by the revenue department of Ward Bara Shimla and also Village Kanlog. Perusal of the average sale price of Station Ward, Shimla is Rs.51/- per sq. yard (approximately) and Rs.106 sq. yard. The same is definitely indicative of the market value at which the sales are being effected. In Award Ext.PY no such evidence was there. In any case the same pertained to the year 1978 and the value of the acquired land is presumed to be increased by 20% per annum every year.

The revenue estate Darni is surrounded by revenue estate Bara Shimla on one side and revenue estate Kanlog on another side. Chhota Shimla, which is subject matter of acquisition Ex.PX is further then the revenue estate Kanlog. Revenue estate Darni is having more similarities with the revenue estate Ward Bara Shimla then Kanlog because of its locational advantages and being put to commercial use. It has come on record vide Ext. PW-4/C and Ext.PW-4/D that the average sale price of Ward Bara Shimla is Rs.106 per sq. yard for the period one year preceding the date of acquisition and Rs.51/- per sq. yard for the period 5 years prior to the date of acquisition.

As per the sale transactions proved on record the average price comes to approximately Rs.325/- per sq. yard. I see no reason as to why the appellant be not awarded compensation on the basis of the same. Sale deeds pertaining to small parcels of land can be relied upon for determining the compensation as has been held by the Apex Court. However, deductions for locational disadvantage etc. are necessarily required to be made. No doubt it is true that sale transactions Exts. PB, Ext.PC and Ext.PW-5/A pertain to land of prime location i.e. on The Ridge, however, it cannot be said that the same cannot be considered at all

for the purpose of determining the market value. They, coupled with the average sale price as also expert's report and the judgment of this Court can be considered for arriving at the fair market value of the acquired land. In terms of Ex.PW-6/A, the market price of acquired land is approximately Rs.200/- per sq. yard and the same is based on the aforesaid sale transactions.

Importantly Ved Parkash, PW-4 has not been cross-examined. Shri R.B.Saxena (PW-6) has deposed that the valuation in terms of his report is correct. In his cross-examination, there is nothing which has come out and which would show that his statement is false, incorrect or does not inspire confidence. Thus, keeping in view the totality of the circumstances and particularly when the testimony of the witnesses PW-4 and PW-6 is unrebutted and uncontroverted, I am of the considered view that fair market value of the acquired land is Rs.200/- per sq. yard. Even with regard to Village Kanlog the three yearly average value comes to Rs.1,27,504/- per Bigha.

Since the entire land is to be acquired for the purpose of construction of road, in my view, no deduction at all is required to be made as the entire acquired land is to be utilized fully. In any case the acquired land stands fully developed and is also a small parcel of land for which no deduction is warranted.

Ex.R-1 is a letter dated 8.9.1986 written by Additional Deputy Commissioner, Shimla, to the Land Acquisition Collector approving the rates of the different categories of land. Statement of RW-1 shows that he has only exhibited Ext.R-1 which in any case is not for the purpose of fixing the market value of acquired land but for the purposes of fixing the value for affixing stamp duty on the registration of the sale

deeds and thus cannot be made the basis for determining the market value of compensation payable for the acquired land.

For all the aforesaid reasons, the appeal is accepted and the impugned award is modified to the extent that the appellants shall be entitled to market value of their land @ Rs.200/- per sq. yard. The appellants shall also be entitled to all the statutory benefits under Sections 23(1A), 23, 28 and 34 of the Act on the enhanced amount in accordance with law.

12th October, 2007 (Sanjay Karol)
(C) Judge.